

Manifestation Determination (CDE Recommended Form) Guidance Document

Introduction: When a decision is made to effect a disciplinary change in placement for a student with a disability who violated a code of student conduct, the public agency must conduct a manifestation determination within 10 school days of that decision. A disciplinary change in placement occurs when a student is removed for more than 10 consecutive school days or is subjected to a series of removals that constitute a pattern because –

- the series of removals total more than 10 school days in a school year;
- the child's behavior is substantially similar to the behavior in previous incidents that resulted in the series of removals; and
- such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.ⁱ

The purpose of the manifestation determination is to determine if the student's conduct was a manifestation of the child's disability or a result of the failure to implement the student's IEP.

This form is used to:

- Document: (1) the consideration and conclusion of the administrative unit (AU), parent and relevant members of the IEP team (as determined by the parent and AU) regarding whether the student's behavior was a manifestation of the student's disability; and (2) outcomes of disciplinary decisions.ⁱⁱ
- Ensure compliance with IDEA regulation 34 CFR §300.530

Instructions:

1. **SECTION 1:** Enter student information and date at the top of the IEP cover page. For type of meeting check the "other box" and indicate manifestation determination.
2. **SECTION 2:** Follow the instructions for completing the IEP cover page. If the Student is not yet eligible for special education, indicate N/A in the dates for eligibility, IEP review, and post secondary goals. If the parent has provided consent to evaluate the student, indicate the date that the consent was received on this page.
3. **SECTION 3:** Follow the instructions for completing the IEP cover page. If the school attended by the student is a charter school of the Charter School Institute, indicate such in lieu of district name. List the student's current eligibility for special education services.
4. **SECTION 4:** Relevant Information: This section is used to record relevant information about the student and the behavior resulting in discipline. It is within this section that the team gathers and reviews all relevant information, including the student's current IEP, to determine whether the behavior in question was a manifestation of the student's disability.ⁱⁱⁱ The team must review the student's IEP to determine whether the student's behavior was a direct result of failure to implement the IEP (e.g., failure to provide services or to implement accommodations and/or modifications as stated in the IEP or outlined in the behavior goals/plan).

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- Enter the date of incident on which the behavior occurred, disciplinary removal and date of manifestation determination meeting. In accordance with § 300.534, protections under the IDEA may be available to students who have not been determined eligible for special education and related services and who have engaged in behavior that violated a code of student conduct. If the student has been referred to special education for evaluation, enter the date of the special education referral.
- **FBA and BIP Information:** Record whether a functional behavior assessment (FBA) and/or a behavioral intervention plan (BIP) were completed prior to this incident. AU policy may provide that the BIP is not a part of the IEP to allow for greater flexibility in making changes or revisions as interventions are adjusted and revised. When used in this manner, the BIP becomes a fluid document and should record when additions, changes or modifications were last made. For manifestation determinations, FBA and BIP information are particularly important because –
 - When behavior is found not to be a manifestation of a student's disability and the student is subjected to a disciplinary change in placement, the student must receive, as appropriate, a FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 300.530(d)(1)(ii).
 - When behavior is found to be a manifestation of a student's disability and the student has not previously had a FBA or a BIP, the IEP team must conduct a FBA and implement a BIP for the student. If the student previously had a FBA and has a BIP, the IEP team must review the BIP and modify it, as necessary, to address the behavior. 300.530(f)(1).
 - When a student has been removed to an interim alternative educational setting due to special circumstances, the student must receive, as appropriate a FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 300.530(d)(1)(ii).
- **Behavior subject to disciplinary action:** Describe the student's behavior in objective terms including descriptions of setting events, antecedents and hypothesis if known. Include the severity, intensity and duration of the behavior, etc. If the behavior involved other students, refer to those students using a method that protects their confidentiality (e.g., Student A, Student B, etc.; or when incident reports are reviewed, redact personally identifying information).
- **Describe Code of Conduct Violation:** Describe the code of conduct violation and, if applicable, check the appropriate special circumstances box. It is important to ensure that parents understand that a school has the ability to make a unilateral removal to an interim alternative educational setting (IAES) for up to 45 days for special circumstances.^{iv} Those special circumstances exist when the student: (1) knowingly possesses or uses illegal drugs or solicits or sells controlled substance while at school, on school premises, or at a school function; (2) carries to or possesses a weapon at school, on school premises, or at a school function; or (3) inflicts serious bodily injury upon another person while at school, on school premises, or at a school function. The terms "illegal drug", "controlled substance", "weapon", and "serious bodily injury" are defined by federal law, not state law. Please refer to §300.530(i) for the citations to the United States Code defining those terms. A manifestation determination meeting should be convened even when the child is removed to an IAES for up to 45 days under these special circumstances. If a student is removed due to a code of conduct violation involving special circumstances, the student must continue to receive educational services, although in another setting, so as to enable the student to progress in the general education curriculum and progress toward meeting IEP goals.

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- Record of disciplinary actions occurring within the school year: The team should review previous disciplinary actions to determine if there is a pattern of removals that would constitute a disciplinary change in placement. The AU determines, on a case-by-case basis, whether a pattern of removals constitutes a change in placement.^v
- Behavior needs and goals: List all educational needs of the student whether or not they are commonly associated with the student's primary disability. Identify relevant academic and behavioral goals as outlined on the student's IEP.
- Consideration of all relevant student information: Provide documentation from all sources of information considered by the team including information provided by the parent; teacher observations; and any other relevant information considered by the team.

5. **SECTION 5:** Determination Decision:

Based on all the information, answer the two questions by checking "yes" or "no".

1. *The conduct in question was caused by or had a direct and substantial relationship to the student's disability(ies).*
2. *The conduct in question was a direct result of the AU's failure to implement the student's IEP*

If the answer to either question is a "Yes", the student's behavior is a manifestation of the student's disability. Proceed to SECTION 6: Manifestation of Disability,

If the answer to both questions is "No", the student's behavior is not a manifestation of the student's disability. Skip SECTION 6: Manifestation of Disability and proceed to SECTION 7: Behavior Not Determined a Manifestation of the Student's Disability.

6. **SECTION 6:** Behavior a manifestation of the student's disability. Identify additional actions and supports to ensure the student's successful return to the placement from which the child was removed. The parent and AU may agree to a change of placement as part of the modification of the BIP.^{vi} After completing this section proceed to SECTION 8.
7. **SECTION 7:** Behavior not a manifestation of the student's disability. Ensure that documentation sufficiently supports the team's decision for a disciplinary removal and describes the educational services the student will continue to receive in order to participate in the general curriculum as well as progress toward meeting the goals in the IEP.^{vii} Describe the use of positive behavior supports that would ensure the behavior violation does not recur.^{viii}
8. **SECTION 8:** Prior Written Notice, Procedural Safeguards and Signatures: Prior written notice and procedural safeguards must be provided to the parent(s) of a student with a disability on the ***date that the decision*** is made to make a removal that constitutes a disciplinary change in placement.^{ix}

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- Prior written notice may be recorded on the *Prior Notice of Special Education Action* (Prior Written Notice) Form located on the Colorado IEP Forms page at: http://www.cde.state.co.us/cdesped/IEP_Eng.asp.

9. SECTION 9: Identification of Team Members and Signatures

- List all team members participating in the manifestation determination meeting indicating the name of the staff person completing the form, that person's title, and telephone number. Participants in the manifestation determination must include a representative of the AU, the parent, and relevant members of the student's IEP team as determined by the AU and the parent.^x
- Names of guardian/parent(s) should be printed legibly. Signatures reflect participation in the manifestation determination meeting and should not be understood to indicate agreement with outcome of the meeting.

ⁱ IDEA Regulation 34 CFR §500.536. Hereafter, the IDEA regulations will be referred to by section number only (e.g., § 300.100)

ⁱⁱ §300.530(e).

ⁱⁱⁱ §300.530(e)(1)

^{iv} §300.530(g)

^v §300.536(a)(2)

^{vi} §300.530 (f)(2)

^{vii} §300.530(d)(i)

^{viii} §300.530 (d)(ii)

^{ix} §§ 300.530(h) and 300.504(a)(4)

^x §300.530(e)